

STATE OF CALIFORNIA
FISH AND GAME COMMISSION
AMENDED INITIAL STATEMENT OF REASONS FOR REGULATORY ACTION
(Amended Pre-publication of Notice Statement)

Add Section 1.91; Amend Sections 1.90, 27.60, 27.65, 27.82, 28.27, 28.28, 28.29, 28.54, 28.55, 28.58 and 28.65

Title 14, California Code of Regulations (CCR).

Re: Options for Take of Nearshore/Shelf/Slope Rockfish,
Lingcod, Cabezon, **Greenlings**, California Scorpionfish and Ocean Whitefish
for Consistency With Pacific Fishery Management Council Rules

- I. Date of Initial Statement of Reasons: August 27, 2002
- II. Date of Amended Initial Statement of Reasons: September 24, 2002
- III. Dates and Locations of Scheduled Hearings:

- | | | |
|-----|--------------------|---|
| (a) | Notice Hearing: | Date: August 2, 2002
Location: San Luis Obispo, CA |
| (b) | Discussion Hearing | Date: August 29, 2002
Location: Oakland, CA |
| (c) | Adoption Hearing: | Date: October 25, 2002
Location: Crescent City, CA |

- #### IV. Description of Regulatory Action:

- (a) Description of Problem or Condition that Regulation Change is Intended to Address:

Changes in sport fishing regulations for groundfish and associated species that would take effect beginning in January of 2003 are needed to help meet rebuilding goals for overfished stocks of offshore (shelf) rockfish and lingcod. Also, regulation changes are proposed to help conserve California scorpionfish and nearshore rockfish stocks faced with reduced authorized annual harvests during 2003, and to protect nearshore rockfish stocks from an expected increase in fishing pressure during 2003 as a result of fishing effort being redirected from offshore waters closed to fishing. These changes will be adopted in September 2002 by the Pacific Fishery Management Council (Council) and adopted as federal rules by the National Marine Fisheries Service (NMFS). Adoption of these changes by the Fish and Game Commission (Commission) at its October 2002 meeting is needed to ensure consistency between California sport fishing regulations and federal regulations for 2003. Consistency in the regulations will

aid efforts at stock rebuilding and provide for consistent federal and State enforcement of regulations.

Under existing law, west coast groundfish are managed by the Council pursuant to the Pacific Coast Groundfish Fishery Management Plan (Groundfish Plan) adopted to comply with policies and standards of the Federal Sustainable Fisheries Act (Public Law 94-265). California, along with Oregon, Washington, and Idaho, are represented on the Council and participate in management decisions made pursuant to the Groundfish Plan. About 60 species of rockfish, and lingcod, are designated as “groundfish” under federal law, along with several other bottom dwelling fishes that include cabezon and California scorpionfish (commonly termed “sculpin”). Current federal law requires that rebuilding plans be adopted for those groundfish stocks that are determined by the Council to be overfished. At least six species of rockfish and lingcod are currently assessed as overfished, with rebuilding expected to take several decades in the case of the overfished rockfish stocks. Overfished rockfish stocks for which regulatory changes are proposed are bocaccio (occurs primarily south of Cape Mendocino, Humboldt County), and canary and yelloweye rockfish (occupy waters primarily off northern and central California).

California is involved with management and regulation of rockfish, lingcod and associated groundfish through its participation on the Council, the Groundfish Management Team, and the Council’s scientific advisory committee. California is also involved with groundfish management through California Department of Fish and Game (Department) and California Fish and Game Commission (Commission) regulatory actions to conform with Council approved changes to groundfish rules which are adopted as regulations by the National Marine Fisheries Service (NMFS). The Director of the Department conforms California’s commercial groundfish provisions to NMFS adopted rules (Fish and Game Code Section 7652), while the Commission adopts regulations to conform California’s sport fishing regulations for State waters to Council approved (and NMFS adopted) groundfish measures under the Commission’s general sportfishing regulatory authority (Fish and Game Code Section 205). The Commission normally considers changes to California’s sport fishing regulations biennially in odd numbered years. However, federal regulatory actions taken to rebuild overfished stocks of rockfish and lingcod have required the Commission to adopt sportfishing regulations for rockfish and lingcod on an annual basis during the past several years.

Also under existing law, the Marine Life Management Act of 1998 (MLMA) (Chapter 1052, Stats. 1998) and Nearshore Fisheries Management Act (Chapter 1053, Stats. 1998), respectively, direct the Commission to prepare a fishery management plan for nearshore fish stocks (that include predominantly

groundfish species), and authorize the Commission to manage nearshore fish stocks. Nearshore fish stocks include several nearshore rockfish, cabezon, greenlings, California scorpionfish, and California sheephead on an interim basis while a Nearshore Fishery Management Plan (Nearshore FMP or plan) and plan implementing regulations are developed and adopted (Fish and Game Code sections 7071 and 8587.1).

As background, rockfish are primarily benthic (bottom dwelling) fishes that are currently categorized and managed under federal rules as either “minor nearshore,” “shelf,” or “slope” species. These three assemblages of rockfish tend to be caught over either shallow (nearshore), mid-depth (shelf), or deep water (slope) habitats, respectively. Shelf (and slope) rockfish, that generally occur in waters 20 fathoms (120 feet) or greater in depth, include those species that have been determined by the Council, along with lingcod, to be overfished. Shelf rockfish species tend to aggregate with other shelf rockfish and associated species, principally lingcod, off central and northern California, and California scorpionfish and ocean whitefish off southern California. Nearshore stocks of rockfish generally occupy shallower waters near shore and tend to be found with other state and federally managed species including cabezon and greenlings off central and northern California, and California scorpionfish and sheephead off southern California. None of the nearshore rockfish species are currently designated as overfished.

The Council has historically focused its management efforts on the high-volume/high-value offshore groundfish fisheries that include the deeper shelf and slope rockfish and lingcod stocks. Management of nearshore rockfish and associated groundfish species, i.e., cabezon, greenlings, California scorpionfish, and State managed species, i.e., California sheephead, monkeyface eel, has generally fallen to the states and is conducted in California primarily under authority of the MLMA and the Commission’s general sport fishing regulatory authority under Fish and Game Code sections 200 et seq.

Under existing laws and regulations, an increasing number of regulatory measures have been adopted and adjusted annually by the Council and Commission since 1998 to assist in management and rebuilding efforts for shelf/slope rockfish and lingcod. These regulatory changes generally include establishment and adoption of regional management areas, seasonal closures in management areas, establishment and adjustment of minimum size and bag limits, and regulation of the number of hooks and lines authorized for use to maintain harvests within the rebuilding goals set for these species. Also, in recent years, area and season closures in offshore shelf and slope waters adopted to conserve and rebuild offshore stocks of rockfish and lingcod have raised increasing concerns for the redirection of fishing effort from shelf rockfish

and lingcod stocks to nearshore fish stocks and associated species. To address these concerns, the Council and Commission have increasingly adopted area and seasonal closures in nearshore waters that coincide with the all or portions of closures in offshore shelf waters.

In addition to the overfished status of several rockfish stocks, characteristics of rockfish life history and fisheries also contribute to the need for increasingly restrictive measures to protect and rebuild these stocks. Rockfish and lingcod tend to associate with other species of rockfish throughout their range, which subjects overfished stocks to exploitation at the same time that other healthy stocks of rockfish and associated species, i.e., California scorpionfish and ocean whitefish, are being caught. Also shelf and slope rockfish taken in waters greater than about 17-20 fathoms (100-120 feet) cannot be returned to the water alive following capture because of internal injuries resulting from the expansion of the fish's gas bladder when brought to the surface (the gas bladder allows the fish to be neutrally buoyant at depth). Therefore, in order to protect and help rebuild overfished stocks of shelf (and slope) rockfish, a prohibition on all fishing for rockfish and lingcod, as well as California scorpionfish and ocean whitefish, is typically required in waters frequented by the overfished species. At the same time, nearshore rockfish taken in waters less than about 100 feet are less likely to die when returned to the water because of the reduced likelihood of gas bladder related death. Also, closure of deeper shelf and slope waters to the take of rockfish and lingcod to provide for rebuilding of overfished stocks raises increasing concerns for the effects of shifts in fishing effort from deeper water to shallow water species.

Existing regulations governing recreational fishing for rockfish, lingcod, cabezon, and California scorpionfish (those species for which regulations are proposed to be amended) include:

- Recent Council action in June 2002 resulted in a July 1, 2002 closure for the balance of the calendar year on the take of rockfish and lingcod in waters 20 fathoms or greater in depth south of 40 degrees, 10 minutes North Latitude, near Cape Mendocino, Humboldt County. The take of nearshore rockfish stocks and up to two shelf rockfish species, not including bocaccio, cowcod, canary, and yelloweye rockfishes, continue to be authorized in waters less than 20 fathoms. California acted to conform to the Council. This action was taken after reviewing recent assessments for overfished bocaccio rockfish stocks that indicated this stock to be in a severely overfished condition requiring immediate reduction in harvests by both recreational and commercial fisheries.
- In addition to the current prohibition on sport take of rockfish and lingcod in waters 20 fathoms or greater in depth, regulations remain in place in

Title 14, CCR that include a daily bag and possession limit of 10 rockfish in combination of species, with the exception of bocaccio (2 fish per day), canary rockfish (1 fish per day), yelloweye rockfish (1 fish per day, 2 per boat), and cowcod (0 fish per day), and with an allowance of two shelf rockfish other than bocaccio, canary, cowcod, and yelloweye rockfishes in waters less than 20 fathoms (120 feet) deep during a shelf rockfish closure in waters 20 fathoms or greater in depth (Section 27.60, Title 14, CCR).

- A lingcod daily bag and possession limit of two fish 24 inches or greater in total length (Section 28.27, Title 14, CCR);
- a prohibition on the take and possession of rockfish and lingcod aboard a vessel and by spearfishing in the Central Rockfish and Lingcod Management Areas during a central rockfish and lingcod closure (for 2002, during March through June, and November through December in waters from Point Conception north to Cape Mendocino, Humboldt County) and in the Southern Rockfish and Lingcod Management Area during a southern rockfish and lingcod closure (for 2002, during January and February, and November and December if necessary to meet Council rockfish and lingcod harvest goals, in ocean waters between Point Conception, and the U.S.-Mexico Boarder). An exception exists for rockfish and lingcod taken by those angling or spear fishing from shore, or any man-made structure. (Sections 27.82, 28.27, and 28.55, Title 14, CCR);
- a prohibition on the take of rockfish and lingcod in the cowcod closure areas off southern California (Section 28.27, 28.27, and 28.55, Title 14, CCR);
- an exception to the rockfish closures (in numbers 3 and 4 above) that authorizes the sport take of nearshore rockfishes defined in Section 1.90 of Title 14, CCR, in waters less than 20 fathoms deep in the cowcod closure areas, in the Southern Rockfish and Lingcod Management Area during a southern rockfish and lingcod closure, and in the Central Rockfish and Lingcod Management Area only during the months of May and June, and September and October (March and April of the four-month closure in the Central Management Area are not open to the take of nearshore rockfish) (Section 28.27 and 28.55);
- sportfishing minimum size limits for cabezon, and California scorpionfish and restrictions on the take of California scorpionfish during a rockfish and lingcod closure as specified pursuant to Section 27.82 (sections 28.28 and 28.54, Title 14, CCR); and
- ocean whitefish may not be taken or possessed in waters 20 fathoms or greater in depth during a southern rockfish and lingcod closure in the Southern Rockfish and Lingcod Management Area, and within the cowcod closure areas (Section 28.58, Title 14, CCR).

Proposed regulation changes reflect measures that the Council will be considering and adopting at its September 2002 meeting to become effective January 1, 2003. These changes include a range of management options that would affect west coast recreational groundfish fisheries from the California-Oregon border to the U.S.-Mexico border and include both State and federal waters off California. The Commission is expected to take action at the its October 25, 2002 meeting to adopt changes to California's sport fishing regulations that will conform them to Council adopted recreational groundfish regulations.

Recreational fishery regulation changes proposed for Commission consideration involving the area from 40 degrees, 10 minutes North Latitude, south of Cape Mendocino, Humboldt County, north to the California - Oregon border include:

1. a prohibition on the take of rockfish and lingcod in waters [20 - 27] fathoms or greater (exact depth to be determined), either all year, or from June - October, inclusive, or a less restrictive period to be determined (Section 27.82, Title 14, CCR);
2. a daily bag and possession limit of either 10 rockfish, or 10 rockfish and lingcod in combination with not more than two lingcod in the bag (Section 27.60, Title 14, CCR);
3. a reduction in the daily bag and possession limit for canary and yelloweye rockfish from one to zero, and elimination of the authorization of up to two yelloweye rockfish per boat (sections 27.60 and 28.55, Title 14, CCR);
4. an increase in the minimum size limit for cabezon from 15 to 16 inches in total length (Section 27.28, Title 14, CCR);
5. a requirement to use of barbless circle hooks when rockfish or lingcod are aboard (Section 28.65, Title 14, CCR);
6. expansion of current authority to close the recreational fishery for lingcod and rockfish to include nearshore rockfish, or subgroups of nearshore rockfish, and/or California scorpionfish when the Department determines that a harvest guideline published as regulation by the National Marine Fisheries Service has been exceeded or is projected to be exceeded (Section 27.82, Title 14, CCR).

Changes to recreational fishery regulations proposed for Commission consideration involving waters between 40 degrees, 10 minutes North Latitude, (near Cape Mendocino, Humboldt County) to the U.S.-Mexico border include:

1. a total prohibition on the take of rockfish, lingcod, California scorpionfish, and ocean whitefish in either waters [10 - 20] fathoms [(60-120 feet)] deep or greater (exact depth to be determined) (Section 27.87, Title 14, CCR);

2. a reduction in the current sport limit of ten rockfish per day in the aggregate of authorized species (reduced from current 10 to between 9 and 5 per day) during those time periods, and in those areas, where rockfish would continue to be authorized for take in waters less than [10 - 20] fathoms deep (exact depth to be determined). Rockfish in the bag limit in nearshore waters open to fishing would be nearshore species of rockfish except [zero - two] could be shelf species other than bocaccio, cowcod, canary rockfish, and yelloweye rockfish (Sections 27.60 and 28.55, Title 14, CCR);
3. a total prohibition (zero bag limit) on the take of bocaccio, canary, and yelloweye rockfishes (Sections 27.60 and 27.82, Title 14, CCR);
4. a change in the bag limit for California scorpionfish (range of 5-10 being considered) (Section 28.54, Title 14, CCR);
5. new sportfishing minimum size limits for black-and-yellow, gopher, and kelp rockfishes (10 inches), and China and grass rockfishes (12 inches) (Section 28.55, Title 14, CCR);
6. an increase in the cabezon minimum size limit from 15 to 16 inches (Section 28.28, Title 14, CCR);
7. for lingcod, an increase in the daily bag limit from two to three, a decrease in the minimum size limit from 24 to 22 inches, and a corresponding decrease in the minimum fillet length from 16 to 15 inches (Sections 27.60, 27.65, and 28.28, Title 14, CCR);
8. a requirement to use barbless circle hooks when fishing for rockfish and lingcod (Section 28.27, 28.55, and 28.65, Title 14, CCR); and
9. authority to close the recreational fishery for lingcod, rockfish, California scorpionfish, and ocean whitefish when the Department determines that the harvest guidelines published as regulation by the National Marine Fisheries Service for rockfish, a subgroup of rockfish, or California scorpionfish have been exceeded or are projected to be exceeded (Section 27.82, Title 14, CCR).

The Pacific Fishery Management Council met September 10-13, 2002 and developed final regulatory recommendations affecting ocean recreational and commercial groundfish fisheries and fisheries for associated species commencing January 1, 2003. Most of the provisions approved by the Council are consistent with the regulations noticed in the Initial Statement of Reasons dated August 27, 2002 and follow the itemized lists above detailing proposed changes to the Northern, Central and Southern Rockfish and Lingcod Management Areas. However, some of the measures adopted by the Council as outlined below represent a slight departure from the original filing and therefore require re-notice. The Commission is expected to take action at its October 25, 2002 meeting to adopt these changes to California's sport fishing regulations that will

conform them to Council adopted recreational groundfish regulations. They are as follows:

A) Creation of two new management “groups” including definitions and bag limits: “shallow nearshore rockfish,” two fish bag limit; and “groundfish,” 10 fish bag limit. Both groups have special conservation needs stemming from new harvest guidelines adopted by the Council for nearshore rockfish and sculpin stocks south of Cape Mendocino.

B) Reduced bag limits and seasonal adjustments south of Cape Mendocino for cabezon of 3 (from 10) fish and for greenlings of 2 (from 10) fish. These fish are part of the groundfish group and their inclusion in the bag limits and groundfish fishing seasons will help reduce impacts on rockfish stocks while maximizing season lengths for all species. This year, both fisheries were closed early in the year due to quota attainment.

C) An inseason closure mechanism is proposed for rockfish and lingcod fisheries north of Cape Mendocino in waters 27 fathoms or greater in depth if/when the harvest guideline for canary or yelloweye rockfish is reached. This change is needed to reduce impacts on these two overfished rockfish stocks in the event one or the other harvest guideline is reached before the end of the year while providing for continued fishing opportunity for nearshore fish stocks.

D) A special season for California scorpionfish (sculpin) in southern California (Huntington Flats) is provided in waters shallower than 50 fathoms during the months of July-August. This will allow recreational anglers to intercept these fish during their annual spawning migration in the area and will complement a commercial regulation for the same area and time period.

E) Additional language is included that authorizes the Department to close part of a Rockfish and Lingcod Management Area based on harvest guidelines established for subgroups of fishes. This is in response to provision C above and the adoption by the Council of new management subgroups.

As indicated above, regulatory changes are needed to keep annual harvests of overfished stocks of rockfish and lingcod within annual harvest limits being set

by the Council for 2003 to meet rebuilding goals for these stocks. Harvest guidelines [optimum yields (OYs)] for rockfish and lingcod for 2003 are expected to be the same or reduced from 2002 levels for overfished stocks of rockfish. Also, reduced harvest guidelines are expected to be adopted by the Council for nearshore rockfish, along with a separate harvest guideline for California scorpionfish. Recent assessments indicate continued declines in abundance of bocaccio rockfish and continued overfished status for canary, and yelloweye rockfishes. Therefore, maintaining the same regulatory constraints on recreational and commercial fishing as those in place for 2002 is not expected to meet rebuilding goals for these species. Consequently, more restrictive measures than those in place during 2001 and 2002 are being proposed.

The new and reduced harvest guidelines for California scorpionfish and nearshore rockfish, respectively, are also being proposed based on reassessment of nearshore rockfish and the need to set a separate annual harvest guideline or OY for California scorpionfish because of its increased importance in the recreational fishery in recent years. Increases are expected in the targeting of nearshore rockfish and associated species, including California scorpionfish and cabezon, as a result of more restrictive rockfish/lingcod closures offshore during 2003. Concerns for this shift in fishing effort to nearshore waters also requires that additional protections be considered for nearshore stocks, including reduced fishing season (shortened by up to two months to a total of six months), and possible reduced bag limits, adjusting of minimum size limits, and changes in hook requirements to reduce hooking mortality.

Changes in regulations being proposed are presented within three broad option categories that range from more to less restrictive alternatives. Reasons for the broad range of alternatives include the fact that it is unclear what the exact OYs for overfished stocks will be (a range of OYs is currently identified from which the Council will select the final OYs), it is unclear exactly how much fishing effort will shift to nearshore stocks due to closures offshore, and it is not yet clear what the total bycatch of overfished stocks in non-groundfish fisheries will be (bycatch is being analyzed now for the these non-groundfish fisheries). The Commission has the option to select a combination of alternative measures from the three option categories in setting 2003 recreational groundfish regulations, and this is expected to be based largely on the final options that are recommended to the Council for their adoption following receipt of the additional fishery and assessment information being developed by federal and State fisheries managers.

The need for regulatory changes being proposed for 2003 for waters off northern California (north of 40 degrees, 10 minutes North Latitude, to the California-

Oregon border, in the Northern Rockfish and Lingcod Management Area) is primarily to reduce the sport harvests of overfished stocks of canary and yelloweye rockfish that occupy these northern waters. Regulation changes being proposed for 2003 for waters off central and southern California (south of 40 degrees, 10 minutes North Latitude, to the U.S.-Mexico border, in the Central and Southern Rockfish and Lingcod Management Areas) are needed primarily to reduce harvest levels on bocaccio and canary rockfish that occupy these central and southern California waters. Other changes are proposed to help protect nearshore fish stocks from shifts in fishing effort expected to result from closures in offshore shelf waters and to help spread the catch of nearshore fish stocks that will be subject to new or reduced harvest guidelines for 2003. The need for each change being proposed is discussed below (changes are numbered for the Northern, and Central/Southern Rockfish and Lingcod Management Areas to correspond with the numbered summary list of proposed changes above for each area).

Northern Rockfish and Lingcod Management Area:

1. The options proposed for a seasonal or year-round closure in waters [20 - 27] fathoms and greater (exact depth to be determined) off northern California will help reduce the directed and incidental take of canary and yelloweye rockfishes resulting from sport fishing for canary and yelloweye rockfish and other rockfish and bottom dwelling fish. Seasonal closures in shelf waters have not been adopted in past years north of 40 degrees, 10 minutes North Latitude, but are now needed due to the need to further reduce catches of these species.
2. The option for a rockfish/lingcod combination 10-fish bag limit is expected to reduce the time it take for fishermen to take a limit of rockfish and lingcod during those periods when fishing is authorized in nearshore waters. This would reduce the number of canary and yelloweye rockfish taken and discarded dead as an incidental catch while fishing for other nearshore and shelf rockfish.
3. The elimination of an authorized bag limit (zero sport bag limit, applies statewide) for canary and yelloweye is needed to directly reduce targeting on these overfished stocks.
4. An increase in the minimum size limit for cabezon (applies statewide) is proposed to increase protection for this nearshore species from the expected increase in fishing effort by recreational anglers displaced into nearshore waters by the closures offshore.
5. The requirement to use barbless, circle hooks when rockfish or lingcod are aboard (applies statewide) is intended to improve the survival of rockfish and lingcod that must be returned to the water under these regulations. Circle hooks have been tested on other species, such as

salmon, and result in fewer fish being hooked deep, with the hook ingested into the throat or gut. Deep hooking often results in death of the fish upon its release, while the barbless circle hook tends to hook the fish in the mouth where it can be readily removed by the angler, and the fish can be released with better likelihood of survival.

6. The authorization to close the recreational fishery for lingcod, rockfish, and/or California scorpionfish when harvest guidelines adopted as regulations by the National Marine Fisheries Service have been exceeded, or are projected to be exceeded, is needed because current regulations provide only for closures if harvest limits for lingcod, bocaccio, canary, or yelloweye rockfishes are exceeded. New harvest guidelines will also be set for 2003 for California scorpionfish and two subgroups of nearshore rockfish, which will require closure authority to avoid exceeding annual harvest limits for these species.

Central/Southern Rockfish and Lingcod Management Areas:

1. A total prohibition on the take of rockfish, lingcod, California scorpionfish, and ocean whitefish in waters [10 - 20] fathoms [(60-120 feet)] deep or greater is needed to reduce sport harvests of bocaccio, canary, and yelloweye rockfish to help keep harvests levels within those required to meet stock rebuilding goals for these overfished species. The year-round closure in waters [10 - 20] fathoms or greater (the exact depth to be determined) off central and southern California will reduce the directed and continued incidental take of bocaccio, canary, and yelloweye rockfishes that would result in 2003 if fishing were authorized in shelf waters as it was this year. The incidental take of overfished stocks, primarily bocaccio, is too high under regulations adopted for 2002 and must be further reduced to provide for rebuilding of these stocks. The prohibition extends to California scorpionfish and ocean whitefish because fishing for these species would result in the incidental take of the overfished rockfish stocks.

As detailed in the text of the discussion above regarding Council's adopted management actions for 2003, the content in item number 1 above has changed substantially. See item D for revisions and rationale.

2. A reduction in the current sport bag limit of ten rockfish per day in the aggregate of authorized species (reduced from current 10 to between 9 and 5 per day) during those time periods, and in those areas, where rockfish would continue to be authorized for take in waters less than [10 - 20] fathoms deep is needed to lessen the take of nearshore fish stocks.

Nearshore fish stocks are expected to be subjected to increased fishing pressure during offshore closures in 2003. A reduced bag limit will shorten the time it takes for fishermen to catch a limit of fish, and presumably will get fishermen off the water earlier, reducing the likelihood that overfished stocks of rockfish will be taken during the fishing trip.

As detailed in the text of the discussion above regarding Council's adopted management actions for 2003, the content in item number 2 above has changed substantially. See items A and B for revisions and rationale.

3. A total prohibition on the take of bocaccio, canary, and yelloweye rockfishes is needed to eliminate any directed fishing for these species.
4. A reduction in the bag limit for California scorpionfish to between 5 and the current 10 per day is needed to reduce the time that fishermen spend on the water seeking this species that associates with rockfish. The sooner fishermen take a limit of scorpionfish, the less likelihood there is that they will incidentally take overfished stocks of rockfish that occur in the same waters. Also, the reduced bag limit for this species will help spread the catch over time, which may help prevent reaching the OY before the end of 2003 which would require closing the fishery for this species.
5. New sportfishing minimum size limits for black-and-yellow, gopher, and kelp rockfishes (10 inches), and China and grass rockfishes (12 inches), are expected to reduce the impact of increased fishing effort on these stocks which will likely result from the offshore rockfish/lingcod closures. Nearshore rockfish are already subject to increasingly heavy fishing pressure from directed commercial and recreational fisheries. Commercial size limits already exist for these species of rockfish, and the extension of these size limits to the sport fishery should provide additional protections for sub adults and young adults of these species.
6. An increase in the cabezon minimum size limit from 15 to 16 inches is needed to extend additional protections to this nearshore species by allowing the return of more adult cabezon to the water following capture. This will offset to some degree the expected increase in take due to more intense fishing for nearshore species resulting from the complete closure to fishing for rockfish and lingcod in offshore shelf waters.
7. The proposed increase in the daily bag limit of lingcod in nearshore waters of central and southern California when fishing is authorized there, the decrease in the minimum size limit from 24 to 22 inches, and a corresponding decrease in the minimum fillet length from 16 to 15 inches provide for some additional fishing opportunity in nearshore waters in the face of rockfish and lingcod closures offshore and other associated

restrictions in the nearshore. Lingcod stocks are improving under current management and appear able to sustain some additional fishing pressure and still meet rebuilding goals set for this species. The prohibitions on the take of lingcod offshore in conjunction with rockfish closures are needed because lingcod and shelf rockfish inhabit the same areas. Targeting lingcod in shelf waters increases the risk of taking overfished stocks of shelf rockfish that cannot support additional harvests.

8. A requirement to use barbless circle hooks when fishing for rockfish and lingcod is needed for the same reasons as provided under Number 5 above for the Northern Rockfish and Lingcod Management Area (north of 40 degrees, 10 minutes, North Latitude to the California-Oregon border).
9. Authority to close the recreational fishery for lingcod, rockfish, subgroups of nearshore rockfish, and California scorpionfish when the Department determines that the harvest guidelines published as regulation by the National Marine Fisheries Service for rockfish, a subgroup of rockfish, or California scorpionfish has been exceeded, or is projected to be exceeded, are needed for the same reason as provided under Number 6 above for the Northern Rockfish and Lingcod Management Area (north of 40 degrees, 10 minutes, North Latitude to the California-Oregon border).

- (b) Authority and Reference Sections from Fish and Game Code for Regulations:

Authority: Sections 200, 202, 205, 215, 220, 5508, 7071 and 8587.1, Fish and Game Code.

Reference: Sections 200, 202, 205, 215, 220, 5508, 5509, 8585.5, 8586 and 8587.1, Fish and Game Code.

- (c) Specific Technology or Equipment Required by Regulatory Change:

None

- (d) Identification of Reports or Documents Supporting Regulation Change:

Range of Harvest Levels, Management Measures Proposed for 2003, a summary of changes being considered by the Pacific Fishery Management Council for 2003, 8 pp.

Fisheries off West Coast States and in the Western Pacific; Pacific Coast Groundfish Fishery; Annual Specifications and Management Measures; Trip Limit Adjustments and Closures; Federal Register/Vol. 67, No. 129/Friday, July 5, 2002/ Rules and Regulations, pp. 44778-44786.

Derivation of Minor Rockfish Harvest Guidelines and Fishery Allocations Proposed for 2003 Nearshore Fisheries Including a Description of the Fishery Model and Assumptions Used to Develop 2003 Nearshore Fishing Regulations. Tom Barnes, Marine Region, September 17, 2002.

- (e) Public Discussions of Proposed Regulations Prior to Notice Publication:

Pacific Fisheries Management Council Public Meetings were held on the following dates to discuss the groundfish options being considered for 2003, including proposed regulatory measure affecting California's recreational fisheries for rockfish, lingcod, and associated species.

Eureka, CA - July 23, 2002, 7-9 PM
Humboldt County Supervisors Chambers

Oakland, CA - July 24, 2002, 7-9 PM
Elihu Harris State Building

Los Alamitos, CA - July 25, 2002, 7-9 PM
Department of Fish and Game office

San Luis Obispo, CA - August 2, 2002, 2-4 PM
City Council Building Meeting Room

Portland, Oregon - September 10-13, 2002
Pacific Fishery Management Council Meeting

V. Description of Reasonable Alternatives to Regulatory Action:

- (a) Major Alternatives to Regulation Change: Three broad options, with a suite of management measures proposed under each option, affecting the take of rockfish, lingcod, California scorpionfish, cabezon, and ocean whitefish are proposed for the 2003 sport fishing season. These options and management measures include alternatives that are reasonably available at this time to achieve rebuilding goals for overfished rockfish, while still providing California's recreational fishery participants with some continued opportunities to fish for rockfish and lingcod in nearshore waters.

Other alternatives available to federal and State fisheries managers include either more drastic cuts in rockfish/lingcod bag limits or the elimination of all recreational fishing for rockfish, lingcod, California

scorpionfish, and ocean whitefish off California. Either of these more drastic measures, in conjunction with commercial fishing restrictions being imposed on groundfish fisheries by the Council, would be expected to achieve the primary objective of reducing harvests of rockfish and lingcod sufficiently to contribute to rebuilding of these stocks. However, even if fishing is severely restricted as proposed under these regulatory options, or entirely curtailed, rebuilding of most overfished stocks is estimated to require decades before directed fishing on these species could again be authorized. Therefore, every effort is being made to adopt regulations that will continue to provide for some continued fishing opportunity and to avoid a total long-term elimination of fishing opportunities.

The option of further reducing the daily bag limit of rockfish is generally unpopular with the public because of the costs associated with fishing in offshore waters today relative to what fishermen consider a satisfying sport fishing experience. Rockfish are generally pursued by recreational anglers for their qualities as food rather than their fighting ability as a sport fish. Consequently, larger bag limits represent a higher quality fishing trip. Commercial passenger fishing vessels (CPFVs) that take anglers and divers fishing for a fee are greatly concerned that if the number of rockfish in the daily bag limit is reduced sufficiently anglers and divers will not pay to participate in this activity.

Total elimination of fishing, while still a possibility if future assessments of overfished stocks indicate little or no improvements, would have greater adverse social and economic effects than the proposed restrictions. These include the further shifting of fishing effort onto other fish stocks and the potential elimination of sectors of the recreational fishery during all or portions of the year, particularly off central and northern California where rockfish and lingcod represent a significant segment of marine finfish available to the fishing public.

- (b) No Change Alternative: The no change alternative does nothing to address the issues that the proposed changes are intended to deal with and will not allow federal rebuilding requirements to be met. The continued need to meet federal rebuilding goals for overfished shelf rockfish stocks, in combination with efforts to provide for some continued ability to fish for healthy stocks of shelf and nearshore rockfish without jeopardizing these stocks, argues for adoption of the additional management measures as proposed in the options.

- (c) Consideration of Alternatives: In view of information currently possessed, no alternative considered would be more effective in carrying out the purposes for which the regulation is proposed or would be as effective and less burdensome to the affected private persons than the proposed regulation.

VI. Mitigation Measures Required by Regulatory Action:

The proposed regulatory action will have no negative impact on the environment; therefore, no mitigation measures are needed.

VII. Impact of Regulatory Action:

The potential for significant statewide adverse economic impacts that might result from the proposed regulatory action has been assessed, and the following initial determinations relative to the required statutory categories have been made:

- (a) Significant Statewide Adverse Economic Impact Directly Affecting Businesses, Including the Ability of California Businesses to Compete with Businesses in Other States:

The proposed action is expected to have a coast wide adverse economic impact affecting business, although this is not expected to affect the ability of California businesses to compete with businesses in other states. The regulation changes are expected to further restrict recreational fishing opportunities in California, particularly the activities of commercial passenger fishing vessels (CPFVs) that rely in large part on taking passengers fishing for rockfish and lingcod to offshore waters 20 fathoms or greater in depth. In regard to effects of rockfish and lingcod closures on the ability of local businesses to compete with businesses in other states, it is unlikely that fishermen unable to fish due to local closures would opt to go to Oregon to fish for rockfish and lingcod given that closures off northern California will also apply in waters off Oregon.

Generally, owners and operators of CPFVs that rely on fishing for rockfish and lingcod off central and northern California have fewer options than those CPFVs operating in waters off southern California. CPFVs that may no longer target rockfish and lingcod in shelf waters must either redirect their fishing operations to nearshore waters for rockfish and lingcod, target other species, or engage in other vessel activities, such as seasonal whale watching, or be faced with finding other occupations. Owners and operators of CPFVs off southern California often target

rockfish and lingcod during winter months when resident and migratory game fishes are not as active or are unavailable. Owners and operators of many CPFVs off central and northern California often rely to a great extent on fishing for rockfish and lingcod; other available target species, including salmon and albacore, tend to be seasonally available.

The practical impact of these regulations is expected to be decreased recreational fishing activity for several species of rockfishes and lingcod along California's coast due to prohibition of the take of these species in waters deeper than 20 fathoms. The extent to which businesses associated with recreational fishing for these species will be affected depends on how consumer demand for their services responds under the proposed fishing restrictions. It is unlikely that most recreational fishermen will abandon all ocean fishing activities due to these regulations. Rather, as indicated above, some unknown portion of this fishing sector will substitute other less restricted ocean species in order to continue their ocean fishing activities, but some decrease in overall fishing activity will likely result.

Information from the National Marine Fisheries Service (NMFS) estimates anglers aboard CPFVs take roughly 43% of all ocean rockfishes caught by all recreational fishermen in northern California and 67% in southern California. Year 2001 fishing log data from the Department of Fish and Game shows 5.9% of all northern California CPFV trips and 0.8% of all southern California CPFV trips took place in waters greater than 20 fathoms and specifically targeted rockfish and lingcod. Of those total trips in 2001 for which logs indicate rockfish and lingcod as the target species, the percent of fishing trips to waters greater than 20 fathoms is 34 percent and 75 percent for northern and southern California, respectively. Based on 2002 surveys, average passenger fares for fishing trips on CPFV boats are \$74 and \$57 for northern California and for southern California, respectively. In a 1998-1999 NMFS report of marine recreational fishing trip-related expenditures, an estimated \$17.0 million is directed annually to CPFV services in northern California and \$81.4 million is directed annually to CPFV services in southern California.

In the worst case scenario (all former rockfish and lingcod trips to waters greater than 20 fathoms are considered lost revenue to the CPFV fishing sector), we can project annual revenue losses to CPFV owners and related businesses of \$998,000 in Northern California (or 5.9% of \$17 million), and \$666,000 in Southern California (or 0.8% of \$81.4 million). Note, however, that it is unlikely that revenue losses this high will occur,

since recreational fishermen may substitute other ocean species for rockfish and lingcod.

Since these conformance regulations are subject to review and change each year, we project costs impacts for one-year only. This one-year time horizon for cost impacts, equal to the useful life of the proposed regulations, thus does not require present value discounting.

Impacts of options presented in the Amended Initial Statement of Reasons do not differ from impacts discussed in the original Initial Statement of Reasons dated August 27, 2002.

- (b) Impact on the Creation or Elimination of Jobs Within the State, the Creation of New Businesses or the Elimination of Existing Businesses, or the Expansion of Businesses in California:

Some loss of jobs could result if CPFVs are unable to continue to operate profitably due to the closures and other proposed regulatory measures [See comments under (a) above].

- (c) Cost Impacts on a Representative Private Person or Business:

The agency is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action except those discussed under (a) above.

- (d) Costs or Savings to State Agencies or Costs/Savings in Federal Funding to the State: None.
- (e) Nondiscretionary Costs/Savings to Local Agencies: None.
- (f) Programs mandated on Local Agencies or School Districts: None.
- (g) Costs Imposed on Any Local Agency or School District that is Required to be Reimbursed Under Part 7 (commencing with Section 17500) of Division 4: None.
- (h) Effect on Housing Costs: None.

Updated Informative Digest (Policy Statement Overview)

The Pacific Fishery Management Council (Council) met September 10-13, 2002 and developed final regulatory recommendations affecting ocean recreational and commercial groundfish fisheries and fisheries for associated species commencing January 1, 2003. Most of the provisions approved by the Council are consistent with the regulations noticed in our Initial Statement of Reasons while some of them represent a slight departure from the original filing and require re-notice. These are as follows:

A) Creation of two new management “groups” including definitions and bag limits: “shallow nearshore rockfish,” two fish bag limit; and “groundfish,” 10 fish bag limit. Both groups have special conservation needs stemming from new harvest guidelines adopted by the Council for nearshore rockfish and sculpin stocks south of Cape Mendocino.

B) Reduced bag limits and seasonal adjustments south of Cape Mendocino for cabezon of 3 (from 10) fish and for greenlings of 2 (from 10) fish. These fish are part of the groundfish group and their inclusion in the bag limits and groundfish fishing seasons will help reduce impacts on rockfish stocks while maximizing season lengths for all species. This year, both fisheries were closed early in the year due to quota attainment.

C) An inseason closure mechanism is proposed for rockfish and lingcod fisheries north of Cape Mendocino in waters 27 fathoms or greater in depth if/when the harvest guideline for canary or yelloweye rockfish is reached. This change is needed to reduce impacts on these two overfished rockfish stocks in the event one or the other harvest guideline is reached before the end of the year while providing for continued fishing opportunity for nearshore fish stocks.

D) A special season for California scorpionfish (sculpin) in southern California (Huntington Flats) is provided in waters shallower than 50 fathoms during the months of July-August. This will allow recreational anglers to intercept these fish during their annual spawning migration in the area and will complement a commercial regulation for the same area and time period.

E) Additional language is included that authorizes the Department to close part of a Rockfish and Lingcod Management Area based on harvest guidelines established for subgroups of fishes. This is in response to

provision C above and the adoption by the Council of new management subgroups.

The amended statement also provides greater specificity with regard to some of the original or proposed amended provisions, and attempts to clarify the intent and meaning of other provisions, including additional cross references where appropriate.

Under existing law, west coast groundfish, including rockfish and lingcod, are managed by the Pacific Fishery Management Council (Council) pursuant to the Pacific Coast Groundfish Fishery Management Plan (Groundfish Plan) to comply with policies and standards of the Federal Sustainable Fisheries Act, Public Law 94-265. The California Fish and Game Commission (Commission) adopts sport fishing regulations for groundfish that conform to those of the Council. Current federal law requires that rebuilding plans be adopted for those groundfish stocks that are determined by the Council to be overfished. A number of shelf and slope rockfish (those generally found deeper than 20 fathoms) and lingcod are currently assessed as overfished, with rebuilding expected to take several decades in the case of the overfished rockfish stocks. Overfished rockfish stocks and associated species for which regulations now exist (and for which changes are proposed in the 2003 calendar year) include bocaccio, canary, and yelloweye rockfish, California scorpionfish, and ocean whitefish. Concerns also exist for nearshore rockfish and associated species such as cabezon due to expected shifts in fishing effort from offshore waters closed to fishing.

Existing sportfishing regulations affecting the take of rockfish, lingcod, California scorpionfish and ocean white include designated rockfish and lingcod management areas, seasonal closure periods that prohibit the take of rockfish, lingcod, California scorpionfish, and ocean whitefish in rockfish and lingcod management areas, minimum size and bag limits, and regulation of the number of hooks and lines that are authorized when rockfish and lingcod are aboard a vessel. California scorpionfish and ocean whitefish are prohibited in waters 20 fathoms or greater in depth during rockfish and lingcod closures to avoid the incidental take of overfished shelf rockfish and lingcod. Also, area and season closures exist in nearshore waters that coincide with all or portions of closure periods in shelf waters within rockfish and lingcod management areas. Regulations currently authorize the Commission to close sport fishing for rockfish and lingcod if the Department determines that harvest guidelines adopted as regulation by the National Marine Fisheries Service for lingcod, bocaccio, canary rockfish, and yelloweye rockfish are exceeded, or are projected to be exceeded. Also, a recreational minimum size limit exists for cabezon (a nearshore species).

Generally, sport fishing regulation changes being proposed reflect several options that will be considered by the Council and Commission for the 2003 fishing season. These regulatory measures will affect west coast recreational groundfish fisheries from the

California-Oregon border to the U.S.-Mexico border and involve both State and federal waters off California. The Commission is expected to take action to conform to Council adopted groundfish sportfish regulation changes at the Commission's October 25, 2002 meeting. The proposed changes would prohibit the take of rockfish, lingcod, California scorpionfish, and ocean whitefish in waters [20-27] fathoms [(120-162 feet)] and greater north of 40 degrees, 10 minutes North Latitude (near Cape Mendocino), and waters greater than [10 to 20] fathoms [(60-120 feet)] or greater south of 40 degrees, 10 minutes North Latitude, depending on which minimum depth and closure period is finally adopted for the areas north and south of 40 degrees, 10 minutes, North Latitude near Cape Mendocino, Humboldt County.

Proposed changes to recreational fishing regulations for Council and Commission consideration involving waters from 40 degrees, 10 minutes North Latitude, south of Cape Mendocino, Humboldt County, north to the California - Oregon border include:

- a prohibition on the take and possession of rockfish and lingcod in waters [20 - 27] fathoms or greater (the exact depth to be determined), either all year, or from June - October, inclusive, or a less restrictive period to be determined (proposed change to Section 27.82, Title 14, CCR);
- a daily bag and possession limit of either 10 rockfish, or 10 rockfish and lingcod in combination with not more than two lingcod in the bag (proposed change to Section 27.60, Title 14, CCR);
- a reduction in the daily bag and possession limit for canary and yelloweye rockfish from one to zero, and elimination of the authorization of up to two yelloweye rockfish per boat;
- a seasonal closure on the take of rockfish and lingcod in nearshore waters to range from open all year to closed during specified months, to be determined,
- a requirement that barbless circle hooks be used when rockfish and lingcod are aboard;
- an increase in the minimum size limit for cabezon from 15 inches in total length, to 16 inches in total length; and
- authority to close the recreational fishery for lingcod and rockfish to include nearshore rockfish, or subgroups of nearshore rockfish, and California scorpionfish when the Department determines that a harvest guideline published as regulation by the National Marine Fisheries Service has been exceeded or is projected to be exceeded.

Proposed changes to recreational fishing regulations for Council and Commission consideration involving waters south of 40 degrees, 10 minutes North Latitude, south of Cape Mendocino, Humboldt County to the U.S. - Mexico border include:

- a total prohibition on the take of rockfish, lingcod, California scorpionfish, and ocean whitefish in waters [10 - 20], fathoms [(60-120 feet)] deep or

- greater (the minimum depth beyond which fishing is prohibited will be determined at the Council's September meeting);
- a reduction in the current sport limit of 10 rockfish per day in the aggregate of authorized species (reduced from current 10 to between 9 and 5 per day) during those time periods, and in those areas, where rockfish would continue to be authorized for take in waters less than [10 - 20] fathoms deep (the exact depth to be determined); Rockfish in the bag limit in nearshore waters open to fishing would be nearshore species of rockfish except [zero - two] could be shelf species other than bocaccio, cowcod, canary rockfish, and yelloweye rockfish (proposed change to sections 27.60 and 28.55, Title 14, CCR);
- a total prohibition on the take of bocaccio, canary, and yelloweye rockfishes (bag limits to be zero);
- a change in the bag limit for California scorpionfish (range of 5 -10 being considered);
- new sportfishing minimum size limits for black-and-yellow, gopher, and kelp rockfishes (10 inches total length), and China and grass rockfishes (12 inches total length);
- an increase in the cabezon minimum size limit from 15 to 16 inches total length;
- a requirement to use barbless circle hooks when rockfish and lingcod are aboard;
- authority to close the recreational fishery for lingcod and rockfish to include nearshore rockfish, or subgroups of nearshore rockfish, and/or California scorpionfish, when the Department determines that a harvest guideline published as regulation by the National Marine Fisheries Service has been exceeded or is projected to be exceeded.

These measures are proposed to help meet rebuilding goals for overfished stocks of rockfish and lingcod in offshore shelf waters; to help keep harvests of nearshore fish stocks within harvest guidelines established for nearshore rockfish, California scorpionfish, and cabezon; and to address concerns for shifts in fishing effort to nearshore fish stocks expected to result from closures to fishing offshore.